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NOTE AND COMMENT

DECLARATORY JUDGMENTS.—The widespread interest in this new form of remedial instrument, which was somewhat dashed by the recent decision of the Michigan Supreme Court in *Anway* v. *Grand Rapids Ry.* Co. (1920), 211 Mich. 592, holding declaratory relief to be non-judicial and outside the constitutional power of courts (19 MICH. LAW REV. 86), has been revived by the action of the legislature of Kansas in enacting a declaratory judgment statute almost identical with the Michigan act. This was done with full knowledge of the decision in the *Anway* case, and inasmuch as it is well known that some of the judges of the Supreme Court of Kansas have taken an active interest in advocating this reform, it is fair to assume that the act is likely to escape the constitutional guillotine. The English judges have for two generations or more been the chief proponents of English procedural reform, and nothing would be more universally welcomed in this country than the generous participation and leadership of our high judges in the efforts of the public to make the administration of justice more responsive to social needs.

The new Kansas act, known as the Hegler-Harvey Bill, was signed by

the governor on February 17, 1921, to become almost immediately operative. The text of the act, which may be compared with the Michigan act (Pub. Acts, 1920, No. 150), printed in full in 17 MICHIGAN LAW REVIEW 688, is as follows:

AN ACT Relating to Declaratory Judgments.

Be It Enacted by the Legislature of the State of Kansas:

SECTION 1. In cases of actual controversy, courts of record, within the scope of their respective jurisdictions, shall have power to make binding adjudications of right, whether or not consequential relief is, or at the time could be, claimed, and no action or proceeding shall be open to objection on the ground that a judgment or order merely declaratory of right is prayed for. Controversies involving the interpretation of deeds, wills, other instruments of writing, statutes, municipal ordinances, and other governmental regulations, may be so determined, and this enumeration does not exclude other instances of actual antagonistic assertion and denial of right.

SECTION 2. Declaratory judgments may be obtained and reviewed as other judgments, according to the code of civil procedure.

SECTION 3. Further relief based on a declaratory judgment may be granted whenever necessary or proper. The application shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaration of right to show cause why further relief should not be granted forthwith.

SECTION 4. When a declaration of right or the granting of further relief based thereon shall involve the determination of issues of fact triable by a jury, such issues may be submitted to a jury in the form of interrogatories, with proper instructions by the court, whether a general verdict be required or not.

SECTION 5. The parties to a proceeding to obtain a declaratory judgment may stipulate with reference to the allowance of costs, and in the absence of such stipulation the court may make such an award of costs as may seem equitable and just.

SECTION 6. This act is declared to be remedial; its purpose is to afford relief from the uncertainty and insecurity attendant upon controversies over legal rights, without requiring one of the parties interested so to invade the rights asserted by the other as to entitle him to maintain an ordinary action therefor; and it is to be liberally interpreted and administered, with a view to making the courts more serviceable to the people.

SECTION 7. This act shall take effect on publication in the official state paper.

This act in terms confines the power of making binding declarations of rights to "actual controversies," a limitation which is doubtless inherent and upon which the English courts have always acted in administering this remedy. It expressly includes "statutes, municipal ordinances and other governmental regulations" among the subjects for declaratory interpretation, which is probably an improvement upon the Michigan act, which included them only by implication, as the English rules do. And it makes clearly specific

its purpose to enable parties to know their legal rights without requiring, as the law has heretofore generally required, the commission or threat of a wrongful act as a condition precedent to judicial action. E. R. S.

ADMIRALTY RULE OF "CARE, CURE AND WAGES" AS APPLIED TO THE GREAT LAKES.—It has been the rule in admiralty law from ancient times that the vessel and her owners are liable in case a seaman falls sick or is wounded in the service of the ship, to the extent of his maintenance and cure and to his wages, but to no further compensation as damages unless the ship was unseaworthy or there was neglect in furnishing care and cure. LAWS OF WISBY, Article 18; RULES OF OLERON, Article VI; LAWS OF THE HANSE TOWNS, Article 39; MARINE ORDINANCES, LOUIS XIV, Bk. III. Title 4, Article 11; 2 Pet. Admiralty Decisions; *The Osceola,* 189 U. S. 158; *The Troop,* 118 Fed. 769.

Questions have arisen, however, as to the extent of the liability for maintenance and cure and as to how long after the injury the sailor is entitled to payment of wages. It is settled that "cure" does not mean complete restoration or healing, but refers rather to care and attention. In *Nevitt* v. *Clarke,* Olcott 316 (Fed. Cas. No. 10,138), it was held that the privilege of being cured continues no longer than the right to wages under the contract in the particular case. In *The Ben Flint,* 1 Abb. U. S. 126, the claim to be cured at the expense of the ship is held to be applicable to seamen employed on the lakes and navigable rivers within the United States. A point long in dispute has been the question of wages due the seaman after the injury. This now appears definitely decided as to the Great Lakes in cases where there enters no element of unseaworthiness, and where the seaman ships for a certain voyage. In *Great Lakes Steamship Company* v. *Geiger* (Circuit Court of Appeals, Sixth Circuit), decided November 5, 1919, reported in 261 Federal Reporter, at page 275, a seaman, after signing regular articles, shipped at a Lake Erie port for a round trip to the head of Lake Superior and return. During the voyage, while aiding in closing the hatches, libelant's finger was caught in the operating mechanism and so crushed that it had to be amputated. There was no question of unseaworthiness, the sole cause of the accident being the negligence of other members of the crew. Care and cure were furnished at the expense of the steamer and his wages were paid to the end of the voyage, that is, until the return of the steamer to Lake Erie. Libelant claimed wages and maintenance for the entire period he was disabled, about three months. The question on appeal was whether libelant was entitled to allowance for wages after the end of the voyage and whether interest should be allowed.

After deciding that the injury here was maritime and within the jurisdiction of admiralty, and reiterating the general rule of care, cure and wages, the court considered the earlier cases on the subject and seemed to qualify to some extent the rule of duration of care and cure set forth in *Nevitt* v. *Clarke, supra,* in cases where either it had been commenced and is in a course of favorable termination or the ship had not given due attention to the seaman's necessities, or the case had been improperly treated; at any